



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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OFFICE OF
WATER AND WATERSHEDS

Ms. Wendy Wiles, Administrator
Environmental Solutions Division
Department of Environmental Quality
Agency Headquarters
811 SW Sixth Avenue
Portland, Oregon 97204-5696

RE: Waiver Request of the 50%/50% Spending Requirement of 319(h) Funding

Dear Ms. Wiles:

The purpose of this letter is to respond to your September 20, 2016, request for a waiver to deviate from the Clean Water Act Section 319(h) National Program Guidance which requires states to use at least 50% of the Section 319(h) funds to implement non-point source (NPS) watershed projects. The waiver request, for FY 2015 and FY 2016, cites difficulties in meeting this requirement because the EPA withheld approximately ~~1/3~~one-third of the State's 319 awards when NOAA and EPA determined the Oregon Coastal Non-Point Pollution Control Program (CNPCP) was not approvable under the Coastal Zone Act Reauthorization Amendments (CZARA). The EPA approves Oregon's waiver request. Going forward, however, there are a number of implementation considerations.

~~In each of those years Oregon Department of Environmental Quality elected to reduce funding for non-point source watershed projects because the "non-project" implementation funds supported the Performance Partnership Agreement (PPA) to fund staff who implement the State's NPS Management Program Plan.~~

The EPA fully appreciates the budgeting difficulties the ODEQ has experienced in the last two 319(h) funding cycles because of the CNPCP decision. In each of those years Oregon Department of Environmental Quality elected to reduce funding for non-point source watershed projects and preserve the "non-project" implementation funds supported the Performance Partnership Agreement (PPA) to fund staff who implement the State's NPS Management Program Plan. The EPA ~~also~~ recognizes the importance of funding staff who implement the State's NPS Management Program Plan for without them, the program would not get implemented. ~~While the EPA approves ODEQ's waiver request, I offer the following regarding your request, and more broadly, on key points regarding the implementation of ODEQ's 319 program.~~

In your waiver request you indicate that the reduced 319 funding arising from the CNPCP decision was the cause of the State not being able to meet the "50/50" spending requirement in the 319(h) National Program Guidance, and that ODEQ is committed to work with EPA, NOAA and other State agencies to address the CNPCP gaps to receive full approval for its CNPCP and the entire 319 award. The EPA sincerely appreciates ODEQ's commitment to work together to address the CZARA gaps and receive full approval; however, based on the figures in your letter, it appears that the "50/50" spending requirement would not have been met in either year even if Oregon received the full 319 award. ODEQ's spending ratio of "PPA" to "implementation projects" was 94.10% ~~to 5.9%~~ in FY 2015, and

76% ~~to~~ 24% in FY 2016. This spending ratio is not inconsistent with years prior to FY 2015 when DEQ used the majority of its 319 award to support the PPA to fund staff who work on non-point source program implementation. Until ODEQ changes how it divides its 319 award between the PPA and project implementation, it is highly unlikely that ODEQ will meet the “50/50” spending requirement.

As you know, the EPA does provide in its 319 guidelines, a “leveraged exemption” from the 50/50 spending requirement for those states that devote and leverage significant (beyond the 40% match) non-federal resources in implementing their NPS plan. In your letter you identified a number of activities the state staff are involved with which directly support non-point source implementation projects that might count towards meeting the 50/50 spending requirement. The EPA is aware of many of these activities since members of ~~my-our~~ staff participate ~~together with your staff~~ on some of the projects. The EPA is also keenly aware of the millions of dollars the Oregon Watershed Enhancement Board spends annually to support restoration projects that address non-point sources of pollution. As such, the EPA completely supports ODEQ’s exploration of a “leveraged exemption” to address the “50/50” spending requirement. Please note, that there are a variety of conditions that ODEQ must meet for the EPA to approve a “leveraged exemption.” ~~so if~~ If ODEQ ~~decides to~~ pursues this path, it is critical that ODEQ begins the process early ~~and send~~ ~~The EPA would like to see~~ a draft of a State proposed “leveraged exemption” plan by ~~3/17~~ March 2017.

At the programmatic level, the EPA recognizes that elements of ODEQ’s 319 program have been hampered by a variety of issues including reduced 319 funding and vacancies in key 319 staff positons during FY 2016. These challenges contributed to delays in ODEQ’s submittal of its Intended Use Plan, the Annual NPS Pollution Program Report and ultimately its application for the FY 2016 funding. The EPA is hopeful that over time these challenges will be addressed and that ODEQ will be able to fill the program vacancies; ~~however though~~, nothing is certain. Therefore, the EPA ~~strongly encourages~~ ODEQ to take a very proactive approach in establishing a program calendar that defines milestones and commitments needed to achieve timely submittals of critical 319 program products, including a timely exploration of a “leveraged exemption.” My staff is committed to work with you and your staff to develop such a calendar before the end of December 2016.

In summary, EPA approves ODEQ’s waiver request of the “50/50” 319 spending requirement for FY 2015 and FY 2016 based on the State’s need to support the PPA, which funds staff who implement non-point source programs, and because of the impacts of substantially reduced 319 funding as a result of an adverse CZARA decision. The EPA strongly encourages ODEQ to explore a “leveraged exemption” for future years when the ODEQ is not likely to meet this requirement. If you have questions or concerns regarding this letter, please feel free to call me at (206) 553-1855 or you can contact Alan Henning of my staff at (541) 687-7360. Thank you for your continued efforts to improve water quality and protect the State’s waters from NPS sources of pollution.

Sincerely,

Daniel D. Opalski, Director
Office of Water and Watersheds